1998

Colonial Pacific Leasing Corp. v. J.W.C.J.R. Corporation, dba Jack's Southwest Collision Repair and John W. Cumberledge, Jr. : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

COLONIAL PACIFIC LEASING CORP.,	:	DOCKET NO. 980062-CA
Plaintiff and Appellee,	:	Appellate Court No. 98-0062 CA
v.	:	Priority No. 15
J.W.C.J.R. CORPORATION, dba JACK'S SOUTHWEST COLLISION REPAIR and JOHN W. CUMBERLEDGE, JR.,	:	
Defendants and Appellants.	:	

REPLY BRIEF OF APPELLANTS

On Appeal from an Order of the Third District Court,
Salt Lake Department, Judge William W. Barrett

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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APPELLANTS' REPLY BRIEF

Objection to Appellee's Statement of Facts:

Appellants J.W.C.J.R. Corporation et al. (hereinafter "lessees") respond and object to Appellee Colonial Pacific's "Statement of Facts" as follows:

1. Fact #2 is more properly termed a statement of law, not a statement of fact. Further, Colonial Pacific's assertion that the subject lease agreement was governed by Article 2A of the Utah Uniform Commercial Code is erroneous. The express terms of the lease agreement state that any litigation regarding the validity and enforcement of the lease would be governed by Oregon law, with jurisdiction residing in the state of Oregon. (Plaintiff's Trial Exhibit #1, paragraph 7; see also Appellant's opening Brief at 10 n.1

(noting that both parties elected to try this case under Utah law)).

2. Fact #3 is a mere generalization, not a statement of fact. The same objection applies to Fact #15.

3. Fact #6 contains a lengthy recitation of various sections of the parties' lease agreement. This recitation of bold-faced, upper capital letters makes this section appear about twenty times larger than it actually does in the lease. It should be remembered that the trial court made the following comment after examining the fine print of the lease: "[T]hat's the smallest print I've ever seen, but go ahead." (T.T. at 83.)

4. Facts #13 and #14 are nothing more than redundant restatements of prior statements of fact.

5. Fact #16 presents a legal argument, not a factual statement. Further, there is nothing in the Record to suggest that Cumberledge made the initial payment to Colonial Pacific "[c]onsistent with his acceptance of the equipment and the terms and conditions of the lease agreement." On the contrary, this payment was made on June 9, 1993, the same day that Cumberledge signed the lease; this occurred before he had ever received any of the leased equipment. (A copy of the subject check is reproduced in Appellee's Brief at Addendum 2.) This issue is more fully addressed in Argument I below.

6. Fact #19 is disputed. There is substantial record evidence indicating that Colonial Pacific was told about lessees' problems with the equipment well before October 30, 1995. For example, Cumberledge testified that in June of 1993, he told a

Colonial Pacific representative that the equipment was junk. In turn, Cumberledge was told that if he did not receive a payment booklet, he could assume the lease had been canceled. (T.T. at 17, 62-66.) Further, Colonial Pacific may not disregard the trial court's own Findings of Fact, which state as follows: "5. Defendant John Cumberledge informed Plaintiff on two occasions that the equipment was not operational. 6. The equipment was returned to Bottomline Systems, Inc. subsequent to the signing and execution of the finance lease. 7. The Defendants were not contacted by Plaintiff *until approximately two years thereafter*, at which time Plaintiff sought payment in full from Defendants." (Finding of Fact #5, 7; see also Ruling of Nov. 24, 1997, at 2-3) (emphasis added).

7. Fact #20 is disputed, and Colonial Pacific's citation to page 18 of the Record to support its contention that Cumberledge "admitted he still had the equipment in boxes" is disingenuous. Page 18 contains testimony from Colonial Pacific's litigation specialist, not from Cumberledge. It was Cumberledge's uncontroverted testimony that the equipment had been boxed up and returned to the supplier, with the exception of the keyboard, which the supplier failed to pick up. (T.T. at 62-66.) These facts were corroborated by the testimony of Alan Shupe, a disinterested third-party, and have been embodied in the trial court's Findings of Fact. (T.T. at 76-77; Finding of Fact #6; see also Ruling of November 24, 1997, at 3.)

8. Fact #21 is argumentative, and is not borne out by the Record. Colonial Pacific's own witness at trial testified that lessees' account had fallen into a "black hole."

(Cite.) It would be very difficult to record a conversation about an account that had fallen into a black hole. Further, Colonial Pacific would have this Court overlook the following exchange that occurred during closing argument:

> [Attorney for Colonial Pacific:] Now that phone call, Your Honor, contrary to counsel's statement, is disputed. My client says that had that have happened, it would have been in the log.
>
> THE COURT: How could it be if it went down a black hole for two years?

(Trial Transcripts at 104-105.)

Objection to Appellee's Repeated References to the Trial Court by Name:

Lessees also respectfully object to Colonial Pacific's repeated pattern of referring to the trial judge by name. Such a practice is nondeferential, and is inappropriate for purposes of appeal.

ARGUMENT

I. COLONIAL PACIFIC'S ATTEMPT TO MANUFACTURE ACCEPTANCE FROM THE RECORD IS WOEFULLY LACKING IN EVIDENTIARY SUPPORT

Recognizing that the concept of "acceptance" is the pivotal issue before this Court on appeal, Colonial Pacific claims there is "abundant[,] undisputed evidence in the Record supporting a finding of acceptance." Appellee Brief at 19. However, when

Colonial Pacific attempts to marshal the evidence in support of such a finding, it can muster a total of only five items of evidence to support its position. Despite Colonial Pacific's assertions to the contrary, this evidence is neither "abundant" nor "undisputed," and also fails to meet the statutory requirements of an acceptance.

The first item of evidence advanced by Colonial Pacific in favor of a finding of acceptance is the demonstration performed by Bottomline for the lessees. See Appellee's Brief at 19. Colonial Pacific claims that since lessees had been provided with a demonstration showing how similar equipment would operate, they knew the "type of equipment [they] were getting before [they] ever signed a lease agreement." Id. Colonial Pacific fails to show how this fact equates to an "acceptance" of the leased goods. It is quite obvious, however, that the demonstration by itself cannot support a finding of acceptance. Pursuant to Utah Code Ann. § 70A-2a-515, a party to a lease agreement does not accept the leased goods until at least three conditions are met, namely: (1) lessees have *received delivery* of the leased goods; (2) lessees have been afforded a *reasonable opportunity to inspect the goods*; and finally, (3) lessees *signify that the goods are conforming, or that they will take them in spite of their nonconformity.* Utah Code Ann. § 70A-2a-515(1)(a) (emphasis added). In the alternative, an acceptance may also occur if a lessee fails to make an effective rejection of the goods after the goods are delivered. Utah Code Ann. § 70A-2a-515(1)(b) (citing § 70A-2a-509(2)).

When analyzed in the context of these statutory requirements, it is clear that the demonstration performed by Bottomline lends no support for a finding of acceptance. By

Colonial Pacific's own admission (see Appellee Brief at 19), the subject demonstration occurred before the lease agreement was even signed by lessees and before the lessees had received any of the equipment. Because acceptance cannot occur until after lessees have received the goods and they have been provided with a reasonable opportunity to inspect them, the demonstration by itself cannot support a finding of acceptance. Colonial Pacific's reliance on the same is therefore unhelpful.

The next item of evidence cited by Colonial Pacific to support a finding of acceptance is the delivery of the equipment to lessees. See Appellee Brief at 19. This item of evidence comes closer to providing some support for an acceptance, but still fails to pass muster. The mere fact that lessees have received possession of the equipment does not amount to an acceptance, because lessees still must be given a reasonable opportunity to make an inspection. Utah Code Ann. § 70A-2a-515(1). In the instant case, the Record indicates that on the same day the equipment was delivered, lessees informed Colonial Pacific that the equipment was not functioning properly. (T.T. at 12, 58-60; Finding of Fact #4.) Accordingly, no acceptance could have occurred on that day. Colonial Pacific must therefore look to other evidence beyond mere delivery of the equipment to support a finding of acceptance.

Colonial Pacific next turns to the initial payment of $515.76 made by Cumberledge under the lease agreement, and argues that such payment constituted an act "consistent with acceptance." Appellee Brief at 19. Colonial Pacific concedes, however, that this payment was made in advance of the actual delivery of the equipment to the

lessees. Again, pursuant to section -515, acceptance cannot occur until after lessees have received the goods and after they have been afforded a reasonable opportunity to inspect them. It is undisputed that Cumberledge's initial payment was made on June 9, 1993, one day before he received the equipment. Consequently, this item of evidence also fails to lend any support for a finding of acceptance.

The fourth item of evidence relied upon by Colonial Pacific for a finding of acceptance is the written "Acknowledgement and Acceptance of Equipment by Lessee" (hereinafter the "Acknowledgement"). Appellee Brief at 19. This Acknowledgement was signed by Cumberledge on June 9, 1993, the same day he made the initial lease payment and the same day he signed the lease agreement. Again, this occurred before he had actually received any of the leased goods. Consequently, the statements contained in the Acknowledgement are false on their face. Inasmuch as the Acknowledgement was signed before lessees had actually received the equipment, the Acknowledgement cannot be used to support a finding of acceptance.

The last item of evidence offered by Colonial Pacific to support a finding of acceptance is the verbal verification made by Cumberledge on June 11, 1993, two days after signing the lease. Because this verification occurred after lessees had received the equipment, this is the only item of evidence introduced at trial that comes any where close to supporting a finding of acceptance. However, as articulated in Appellant's opening Brief, the verification still fails to satisfy the statutory requirements of an acceptance, because it occurred before lessees had been provided with a reasonable

opportunity to make an inspection. Again, the verbal verification occurred only two days after the lease was signed, and only one day after the equipment had been delivered. Cumberledge is not sophisticated in computer programming. He is a body and fender man. He clearly needed more time than a mere two days to inspect the equipment, especially since he had told Colonial Pacific only one day earlier that he was having problems getting it to operate. Sure enough, the equipment crashed the following day, and despite his best efforts, Cumberledge was never able to get it to operate.

Appellees submit that a total of two days to inspect highly unfamiliar, complicated computer software and hardware by a body and fender man is unreasonable, particularly when lessees were led to believe they had thirty days within which to test the equipment. Given the serious and irrevocable consequences of making an acceptance, as well as the sophisticated nature of the equipment, a longer period of time to inspect was warranted. This Court should conclude that a mere two days to inspect did not satisfy the statutory requirements necessary to support a finding of acceptance.

The foregoing analysis shows that Colonial Pacific's so-called "abundant" and "undisputed" evidence of acceptance actually consists of only five items of evidence that wither in the face of the statutory definitional requirements necessary for a finding of acceptance. Four out of the five items of evidence cited by Colonial Pacific can be discarded outright, because those items of evidence point to events that occurred either before delivery of the equipment was made, or at the same time of the delivery. Since a finding of acceptance requires not only delivery but a reasonable opportunity to inspect,

these items of evidence can provide no support at all for Colonial Pacific's position. The last item of evidence advanced by Colonial Pacific can also be discarded, because it points to an event that occurred before lessees were provided with a reasonable opportunity to inspect. Therefore, because the statutory requirements of an acceptance were not proven at trial, this Court should reverse the trial court's decision.

II. COLONIAL PACIFIC CANNOT TAKE REFUGE IN THE CONCEPT OF RATIFICATION

Colonial Pacific cites to this Court's opinion in Horrocks v. Westfalia Systemat, 892 P.2d 14, 16 (Utah Ct. App. 1995), for the proposition that Cumberledge's verbal verification "effectively ratified his prior written Acceptance of the equipment." Appellee Brief at 20-21. Colonial Pacific's reliance on Horrocks is unavailing. In fact, a closer inspection of the Court's holding in Horrocks actually proves fatal to Colonial Pacific's position.

In Horrocks, a dairy farmer entered a contract for the purchase of certain dairy equipment. Prior to the actual delivery of the equipment, a representative of the seller had the farmer sign a written "Purchaser's Acknowledgment & Delivery Acceptance Receipt" (the Acknowledgment), which stated that the farmer had received all of the equipment ordered. Id. At the time he signed the Acknowledgment, the farmer knew that the entirety of the equipment had not been delivered. The representative subsequently made off with the undelivered equipment. Thereafter, the seller sued the farmer, seeking

to irrevocably commit him to making payments under the contract pursuant to the terms of the Acknowledgment. The trial court rejected the seller's position and allowed the farmer to escape the effect of the written Acknowledgment.

On appeal, this Court affirmed the trial court's decision, concluding that the seller and not the farmer should bear the responsibility for the unauthorized, adverse acts of its agent. Id. As in Horrocks, this Court should allow the lessees in the instant case to escape the effect of their written Acknowledgement. This conclusion is compelled for several reasons. First, like the farmer in Horrocks, Cumberledge signed the written Acknowledgment in advance of actually receiving the leased equipment. It has already been demonstrated that acceptance cannot occur until after delivery has been made. See *supra* at _____. Second, again like the farmer in Horrocks, Cumberledge has not received a benefit from the use of the equipment. Cumberledge had the full use of the equipment for a grand total of one day. The following day, the equipment failed, and Cumberledge was unsuccessful in ever getting it to work again. During the next three weeks, neither Colonial Pacific nor the supplier made any effort to assist Cumberledge in getting the equipment to operate, despite several pleas from Cumberledge for help. Thus, like the farmer in Horrocks, Cumberledge has been sued for equipment that, in effect, he never had. Even more compelling is the fact that Colonial Pacific sat around for two years before taking any action whatsoever, all the while giving Cumberledge the impression the lease had been canceled. Colonial Pacific's reliance on Horrocks and the concept of ratification is spurious at best. If anything, Colonial Pacific's willful pattern

of silence and inaction for two years compels the conclusion that the company ratified its agent's statement to Cumberledge that the lease would be canceled if Cumberledge did not receive a payment booklet (which he never did).

III. THE SERIOUS DEFICIENCY IN THE TRIAL COURT'S CONCLUSIONS OF LAW CANNOT BE SAVED BY THE HARMLESS ERROR STANDARD OF REVIEW

Colonial Pacific, seeking to bolster the inadequate evidence introduced at trial in support of a finding of acceptance, relies upon an aside made by the trial court about the existence of other facts in the Record supporting the court's decision. Appellee Brief at 21. Colonial Pacific fails to identify any such additional facts, however, and a search of the Record fails to reveal any. While the trial court did indeed make the statement, "I'm sure there are other facts that support ... these findings and the following conclusions of law," this statement must be considered in its proper context. Only one page earlier in the court's Ruling does the following comment appear: "This is a case that I'd like to make some social commentary on, but I'm going to bite my tongue and not say anything." (Ruling at 2, a copy of which appears in Appendix B of Appellee's Brief.) Such a comment indicates that the trial court was unhappy with the result reached in the case, but that the court nevertheless felt compelled by the apparent irrevocability of the lease to render a decision the way it did.

It should be remembered that lessees are not challenging the trial court's Findings

of Fact. Instead, lessees are challenging the leap made by the trial court in arriving at its Conclusions of Law based upon those Findings. It is clear that the trial court's legal conclusions do not follow from the court's Findings of Fact. The trial court's Findings overwhelmingly demonstrate a lack of acceptance and a timely rejection of the leased goods by the lessees, not an acceptance. For example, Finding of Fact #4 states that the equipment was delivered to lessees' place of business, "but it did not function properly." In addition, Finding of Fact #5 states that Cumberledge informed Colonial Pacific on at least two occasions that the equipment was not operational. Finally, Findings of Fact #6 and #7 state that lessees subsequently returned the equipment to the supplier, and had no other contact with Colonial Pacific for two years thereafter. These written Findings of Fact are consistent with the verbal findings communicated by the trial court on November 24, 1997, and overwhelmingly demonstrate a lack of acceptance by lessees.

The trial court's Conclusions of Law simply cannot be squared with these Findings of Fact. Despite reaching these Findings, the court nevertheless upheld the irrevocability of the lease, requiring lessees to forever make payments to Colonial Pacific. A party's promise to make payments under a lease agreement becomes irreovocable only after that party has accepted the goods. The trial court's Conclusions of Law show a fundamental misunderstanding of this principle, and the court's decision upholding the irrevocability of the lease is erroneous as a matter of law. Such a fundamental misapplication of the law is not a mere "technical deficiency" that would be saved by the harmless error standard of review, as Colonial Pacific has claimed. See Appellee Brief at 21. Instead,

this is a serious deficiency that mandates reversal of the trial court's decision.

IV. LESSEES TIMELY REJECTED THE LEASED EQUIPMENT

Colonial Pacific argues at page 23 of its Appellee Brief that "Cumberledge cannot reject equipment he has already accepted." It is well recognized that "acceptance" and "rejection" are mutually exclusive terms. A party cannot both accept and reject leased goods, but must do one or the other. Thus, this case boils down to whether Cumberledge accepted the leased equipment, or whether he timely rejected the same after having been afforded a reasonable opportunity to make an inspection.

Colonial Pacific argues that lessee's reliance on the doctrine of rejection as embodied in section 70A-2a-509 is "grossly misplaced," contending that section -509 does not apply to finance lease agreements. Appellee Brief at 23. It is lessees' position, however, that section -509 is made applicable to finance lease agreements through the express language of section 70A-2a-515, which Colonial Pacific cites as a determinative authority in this appeal. Appellee Brief at 2. Section 70A-2a-515 defines what actions may constitute an acceptance, and states that an acceptance of goods may occur when a "lessee fails to make an effective rejection of the goods as provided in Subsection 70A-2a-509(2)." Utah Code Ann. § 70A-2a-515(b) (1997). Accordingly, pursuant to the express language of this provision, it appears that section -509 does have some application to finance lease agreements. And even if section -509 applied only to installment lease agreements, that section would still be helpful in analyzing the concept

of rejection.

The key elements of a rightful rejection are two, namely: (1) that a lessee rejects nonconforming or defective goods within a reasonable time after delivery of the same; and, (2) that the lessee seasonably notifies the lessor of that rejection. In the instant case, the trial court's Findings of Fact clearly evidence a timely rejection by Cumberledge of the leased equipment. Cumberledge had the equipment for no more than three weeks, during which time he boxed it up and returned it to the supplier after he was unable to get it to operate properly. The trial court's bench ruling of November 24, 1997, bears this out. During the course of making this ruling, the court stated: "The computer equipment was set up by Mr. Cumberledge [and he] was not able to get it to function properly. He had Bottom Line pick up the computer equipment at some later date. ... Mr. Cumberledge contacted Colonial Pacific Leasing and advised them of the problem. Two to three weeks later, he contacted Colonial again and advised them of the problem. He was under the impression that if he didn't hear from Colonial, everything was okay regarding the lease." (Ruling of Nov. 24, 1997, at 3 (Appellee Brief at Addendum B).

Such findings leave no doubt that Cumberledge timely rejected the leased equipment as defective, and seasonably notified Colonial Pacific of that rejection. Cumberledge's rejection occurred within three weeks after delivery of the equipment to him. A three week period to inspect and reject the equipment should be considered reasonable, given the relative complexity of the equipment, Cumberledge's lack of expertise, and the representation made to Cumberledge that he would have thirty days

within which to test the equipment to ensure it was operational. In short, there is abundant Record evidence showing that Cumberledge made a timely rejection of the leased goods, and such evidence finds recognition in the trial court's Findings of Fact. In light of those Findings, the court clearly erred in failing to conclude that lessees timely rejected the leased equipment, thus discharging their obligation to make payments under the lease.

V. COLONIAL PACIFIC IS NOT ENTITLED TO BENEFIT FROM A STRICT RULE OF ACCEPTANCE

Colonial Pacific's Brief at section E argues that sound public policy favors strict observance of the rule of acceptance. Colonial Pacific fails to delineate, however, why it should benefit from such a rule, or what exactly such a rule would entail. Nevertheless, it appears from the tone of its Brief that Colonial Pacific favors a very short period within which to make an inspection under a finance lease, perhaps as short as one day.[1] In effect, Colonial Pacific is asking this Court to compel lessees to pay more than $20,000.00 for defective equipment that was operational for a total of one day, and which was in the lessees' possession for a total of three weeks. Such a position is untenable, and could hardly have been what the legislature had in mind when it enacted special

[1]Colonial Pacific contacted lessees on the very day the equipment was delivered, asking if the equipment was operational. Had the equipment functioned properly, lessees would have had less than one day to inspect the equipment, and Colonial Pacific would now be arguing that that period of time constituted a reasonable opportunity to inspect.

protections for finance lessors. In any event, Colonial Pacific's actions in this case do not entitle the company to benefit from a strict rule of acceptance.

Despite assertions from it to the contrary, Colonial Pacific actively encouraged lessees to lie by having them sign a false Acknowledgement. (T.T. at 14-15, 44-48). Colonial Pacific should not benefit from encouraging such a dubious and dishonest practice. Nor should the company benefit from its refusal to respond to lessees' numerous and repeated requests for assistance in getting the equipment to operate. In addition, Colonial Pacific should not benefit from affirmatively representing to lessees that if they did not receive a monthly invoice, they could assume the lease had been canceled. (T.T. at 65-66.) Colonial Pacific never once sent any invoices to lessees, even though its own documents represented that lessees would be invoiced monthly.[2] Finally, Colonial Pacific should not benefit from its own willful inaction and silence for two years, nor from its own negligence in somehow allowing lessees' account to fall into a black hole. With a straight face, the company asked for and received from the trial court, interest for this dead time. Under the circumstances of this case, it would be a gross injustice to allow Colonial Pacific to collect any more payments from lessees under the lease.

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[2]Colonial Pacific offered into evidence a lease processing sheet that was obviously a questionnaire checklist. Colonial Pacific now wants to use the verification part of the checklist to its advantage, while disregarding the statement that lessees would be "invoiced monthly."

VI. REVOCATION OF ACCEPTANCE IS A RED-HERRING

Colonial Pacific argues in section F of its Brief that lessees may not rely on the doctrine of revocation of acceptance, since that doctrine has a very limited application and because lessees have not raised that issue before the trial court. Appellee Brief at 27. However, nowhere in lessee's opening Brief is that doctrine ever mentioned as a basis for overturning the trial court's decision, nor, for that matter, is the doctrine ever mentioned in lessee's Brief at all. Accordingly, the doctrine of revocation of acceptance is a red-herring. It should be noted, however, that lessees did raise that issue before the trial court in their Trial Brief, and Colonial Pacific responded to that issue during closing argument. T.T. at 91-92. Consequently, it is an incorrect statement by Colonial Pacific to assert that the issue was never addressed below.

VII. LESSEES' REASONABLY RELIED UPON THE REPRESENTATION THAT THEY HAD A THIRTY DAY TRIAL PERIOD WITHIN WHICH TO TEST THE LEASED EQUIPMENT

Section G of Colonial Pacific's Brief argues that any reliance by lessees on the representation that they had thirty days to test the leased equipment would not be reasonable, because the written contract contains no such provision. Appellee Brief at 29. Colonial Pacific's argument is ill-asserted. It was entirely reasonable for lessees to rely on that representation, particularly since it was reinforced by the company's own two year period of silence and its own statement to lessees that they could assume the lease had been taken care of if they did not receive a billing statement. Cumberledge never

once received a billing statement from Colonial Pacific, nor did he have any other contact with the company for two years. In light of these facts, which find recognition in the trial court's Findings, it would have been entirely unreasonable for lessees to **not** rely on the representation that they had thirty days to test the equipment. Similarly, it would have been entirely unreasonable for lessees to **not** rely on the representation made by Colonial Pacific that the lease had been timely canceled.

Regardless of whether the lease agreement expressly allowed for a thirty day trial period, such a period of time should be implied by this Court as the operable time for making an inspection. In light of the severe consequences of making an acceptance, a thirty day inspection period would have provided a workable middle ground affording both parties with protection. On the one hand, it would have allowed lessees a reasonable opportunity for an inspection, without rushing them into accepting defective equipment. At the same time, a thirty day inspection period would still have provided Colonial Pacific with the statutory protections typically afforded to finance lessors, and would have allowed that company to have avoided funding a lease that was problematic from the outset.[3] Having rushed Cumberledge into making a verbal verification only one day after he received the equipment, Colonial Pacific now asks this Court for its stamp of approval. Colonial Pacific has sought to deny lessees of their statutory right to make a reasonable

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[3]Incidentally, the only evidence introduced at trial showing that Colonial Pacific funded the lease was the self-serving testimony from its litigation specialist. No documentary evidence was offered to show that any money was paid to the supplier, nor to show when such money was paid.

inspection. This Court should uphold that right, and should reverse the trial court's decision.

CONCLUSION/MOTION FOR COSTS AND FEES

Lessees in good faith entered a finance lease agreement for the lease of certain computer equipment and software. Although they have had the use of the equipment for only one day, they have been hauled into court by an absentee lessor that has sat on its rights and affirmatively represented that the lease had been canceled. The trial court erroneously concluded the lease was irrevocable, and entered judgment against lessees in excess of $21,275.30.00. The trial court's own Findings of Fact recognize, however, that the equipment was defective, and was promptly returned to the supplier within three weeks of delivery. Based upon the court's own findings, it is clear that lessees never accepted the leased goods, and in fact timely rejected the same. Hence lessees were discharged from their responsibility of making payments under the lease. The trial court's decision is therefore erroneous as a matter of law, and clearly cannot be sustained on appeal. Lessees respectfully ask this Court to overturn that decision, and to dismiss this matter with prejudice. Lessees further move this Court for an award of all costs and fees incurred in having to prosecute this appeal, pursuant to the terms of the parties' lease agreement, and to remand to the trial court for a determination of defendant's costs of trial.

RESPECTFULLY SUBMITTED this 8 day of October, 1998.

MORRISON & MORRISON, L.C.

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CERTIFICATE OF SERVICE

This is to certify that on the 8 day of October, 1998, I caused to be hand-delivered two true and correct copies of the foregoing Reply Brief to the following:

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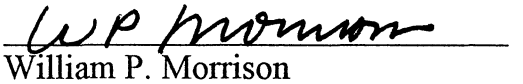

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